



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Pepper Hamilton LLP
400 Berwyn Park
899 Cassatt Road
Berwyn PA 19312-1183

COPY MAILED

JUL 02 2009

OFFICE OF PETITIONS

In re Application of :
Davies, et al. :
Application No. 09/998,613 : ON APPLICATION FOR
Filed: November 30, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 133960.00101 :
:

This is in response to the "Request for Consideration of Patent Term Adjustment Pursuant to 37 CFR § 1.702" filed June 9, 2009. Applicant requests that the determination of patent term adjustment be corrected from seven hundred fifty-three days (753) days to at least two thousand five hundred and three (2,503) days assuming that the patent issues on September 15, 2009. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

The request is **DISMISSED**.

Applicants are advised that § 1.705(b) provides the avenue before the Office for requesting reconsideration of the patent term adjustment indicated in the notice of allowance. See § 1.702-1.705. Moreover, § 1.705(b) provides that:

An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. An application for patent term adjustment under this section must be accompanied by:

- (1) The fee set forth in § 1.18(e) ...

The instant application for patent term adjustment was filed after the mailing of the notice of allowance and with payment of the issue fee. However, neither the fee under § 1.18(e) nor a

general authorization from an authorized user to charge any required fees, accompanied the application for patent term adjustment. Accordingly, the request is dismissed for failure to comply with the requirement of paragraph (b)(1) to submit the fee under § 1.18(e).

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of that patent and accompanied by the \$200.00 fee set forth in 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision and directed to go forward with processing of this application into a patent.

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

/Christina Donnell/

Christina Donnell
Senior Petitions Attorney
Office of Petitions